

is more Consistent, they would share proportionably with the first, and he despoiled of all by an Intervening Annualrenter, who at that time rate might <sup>have</sup> a far greater Share than the first apporizer who was preferable to him. The Lord found, that the Intervening Annualrenter did not hinder the posterior apporizers to come in with the first, and ordered the Annualrent to be in the same Case as if an Apporizing had been made for the sum it was granted for, and so brought all in pari passu point being new and doubt full 6 Feb. 1673 Brown of Col. Town v. Nicolas. But seeing the Act of Parliament 1661 (Ch. act 62) leaves annualrenters as they were before; there seems to be no reason for bringing in the Annualrenter pari passu with the Apporizing, unless the Annualrent be of the same date with the first Effectual apporizing. There fore my Lord Hail (lib. 4 Fife 35 § 30) is of opinion, that an annualrent constituted before the first Effectual apporizing should be preferred to all the Apporizings, the some of these were anterior to the first Effectual apporizing: because it is the first effectual apporizing adjudication that becomes a right. But if the Annualrent be subsequent to the Infestment or Charge upon the first effectual apporizing, all apporizings within the Year, whether before the Annualrent or after, should be preferred thereto, because supposed in law to be contained in the first effectual apporizing: And that, if the Annualrent was up Citation in the said first Effectual apporizing, it is Reducible as contained in Curia Diligen. unless that Apporizer had been negligent in not getting Infestment or Charging so soon as by ordinary Diligence he might do it. Albeit an Apporizing or adjudication for Real debt as by gone Annualrents, &c. is preferred according to the Date of Real right: yet a Voluntary Infestment of property according to the big gone Annualrents contained in a prior Infestment of Annualrent into a principal Sum, and Corroborating the prior Infestment of Annualrent, to prevent the Creditors going to apporize or adjudge for these by gone annualrents; was not found to work the same effect as an Apporizing or adjudication would have done. For that Corroborative Sum did not give the creditor preference for the Annualrents of his Accumulated Sum according to the Date of his first Infestment; but he was only so preferred for the Annualrents due by that Infestment 13 Feb. 1669 M. Lellan contra Lady Kirkcudbright

Posterior apporizers for personal debts, need no Infestment to found their claim in a Competition. For if they be without Year and day of the first effectual apporizing, the first Decree of apporizing duly allowed and recorded, will be preferred. Thus in a Competition of Apporizers, where the first and third were Infest, the first declining to pass more as a part of the Lands apporized; the Lord preferred the second to the third and duties of the rest 22 Decemb. 1669 Ramsay contra Hogg and others. Because the second Apporizer had right to the Reversion of the first which the said second apporizing without Infestment both carried and brought him to possess the Remainder. Albeit it was pleaded for the third Apporizer Infest, that the third had right to the first, his right of Reversion, and so a title him to the said duties, in possession and followed upon his apporizing. For the Lord Rejected this Allegation, and considered the great Disadvantage the Rights would suffer by obliging all apporizers or adjudgers to take Infestment. He having disposed of the said Reversion in back bond obliging the Receiver of the Disposition to provide in his favour when paid of for certain Sums; in adjudication of the lands from the Disposer, with all title right Interest Reversion &c. that he had or could pretend thereto, was found to convey the right of the back bond, and all other rights the Debtor has in the subject adjudged and preferred to a posterior special adjudication of back bond 21 Decemb. 1710 Menzies contra Brown and Campbain. Albeit an Apporizer or adjudger of lands in Special, would be preferred to one who had formerly adjudged a land in General belonging to the Common debtor. The Reason of the Difference is, because lands specially adjudged by one and Generally by another, are Different Subjects: Whereas in the Case of an Adjudication of particular lands, with a General Clause of all right competent to the Debtor, and an adjudication of some Reversion or other Right form competent to him, the Competition Runs de eodem Subjeto, the same lands. An adjudication was found full as to lands in such a parish which were not Designed, but was found to come in pari passu with a prior adjudication within the Year as to lands Expresssed by their Common Name or Designation lying Contiguous and the Mains and Woods thereon; the the posterior adjudication mentioned them not to be in a Barony, as the prior adjudication did: Because the Common Designation with the pertinents is as Distinguishting and Expressive, as that of Barony, which is